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Davidson, Davidson & Kappel, LLC			EXAMINER	
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The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* WOLFGANG NIESSEN

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Appeal 2009-011808  
Application 10/733,486  
Technology Center 3600

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Before LINDA E. HORNER, MICHAEL W. O'NEILL, and  
FRED A. SILVERBERG, *Administrative Patent Judges*.

O'NEILL, *Administrative Patent Judge*.

DECISION ON APPEAL<sup>1</sup>

STATEMENT OF THE CASE

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<sup>1</sup> The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

Wolfgang Niessen (Appellant) appeals under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 1, 3-5, and 8-17 under 35 U.S.C. § 103(a) as unpatentable in view of Sasa (US 5,020,645, iss. Jun. 4, 1991) and Muramoto (US 6,609,994 B2, iss. Aug. 26, 2003) or De La Salle (US 7,035,727 B2, iss. Apr. 25, 2006). Claims 2, 6, and 7 have been canceled. We have jurisdiction under 35 U.S.C. § 6(b). We REVERSE.

*The Invention*

The claims on appeal relate to a method and system for controlling the creep behavior of a vehicle equipped with an automated clutch.

Claim 1, reproduced below, is illustrative of the subject matter on appeal.

A method for controlling creep behavior of a vehicle equipped with an automated clutch, comprising:

detecting actuation of a brake actuating element, a creep parameter influencing a creep of the vehicle, an actuating position of the automated clutch being a function of the creep parameter; and

controlling the creep parameter using a vehicle speed setpoint so that when the brake actuating element is increasingly actuated, the vehicle speed is reduced.

OPINION

*Issue*

The determinative issue in this appeal is:

Whether the Examiner has sufficiently articulated how the Examiner's proposed modification of Sasa with the teachings of either Muramoto or De La Salle would maintain or not fundamentally change the principle operation

of Sasa's scheme for controlling the vehicle speed with brake pedal depression and varying the amount of clutch engagement.

*Analysis*

The gist of the Appellant's arguments is that the Examiner's proposed modification of Sasa with either Muramoto or De La Salle would change the principle of operation of Sasa. In particular, Appellant argues that the modification of Sasa with the teachings of either Muramoto or De La Salle would make Sasa's corrective value scheme moot and not maintain the direct correspondence between the brake pedal amount and the clutch engagement force as taught within Sasa. App. Br. 6, 8, 9, 12, 14, and 15.

A change in the method or principle of operation of the primary reference can render a modification nonobvious. For example, in *In re Ratti*, the modification suggested by the Examiner changed the basic principle of sealing from attaining sealing through a rigid, press-fit, interface between the components, to attaining sealing by providing a resilient interface between the components. 270 F.2d 810, 811-813 (CCPA 1959) ("This suggested combination of references would require a substantial reconstruction and redesign of the elements shown in [the primary reference] as well as change the *basic principles* under which the [primary reference] construction was designed to operate." (emphasis added)). Thus, the Examiner's proposed modification in *Ratti* fundamentally changed the technical basis of how a seal performed its sealing function and how the sealed interface was attained. The facts of the present are analogous to the facts in *Ratti*.

Here, Sasa's system permits a vehicle to travel at a very low speed by controlling the amount of brake pedal depression and correcting the amount

of clutch engagement in dependence upon: the state of the road surface; the adjustment of creep set by the creep adjusting device; and load on the vehicle. *See* col. 7, ll. 28-36. Muramoto, upon switching the switch 10 to parking mode, generates a constant target vehicle speed and calculates a vehicular braking/driving force for the present vehicle speed to become the target vehicle speed, and then regulates this force to maintain the target vehicle speed by controlling the engine, brake, and transmission. *See* Muramoto, *passim*. De La Salle controls vehicle creep with the combination of brake travel and wheel torque regulation (using the engine and transmission). De La Salle, *passim*. The Examiner has not sufficiently explained how the proposed modification of Sasa with either Muramoto's teachings of regulating vehicle speed with controlling the engine, brake, and transmission or De La Salle's teachings of regulating vehicle speed with the combination of brake pedal travel and application of wheel torque would maintain or not fundamentally change the principle of operation of Sasa's scheme of using brake pedal depression and regulating the amount of clutch engagement in order to move the vehicle dependent upon a set of conditions: road, driver's creep setting, and vehicle load.

## CONCLUSION

The Examiner has not sufficiently articulated how the Examiner's proposed modification of Sasa with the teachings of either Muramoto or De La Salle would maintain or not fundamentally change the principle operation of Sasa's scheme for controlling the vehicle speed with brake pedal depression and varying the amount of clutch engagement.

Accordingly, we will not sustain the Examiner's rejection of claims 1, 8, 11, and 16 under 35 U.S.C. § 103(a) as being unpatentable in view of Sasa and Muramoto or De La Salle. The rejection of claims 3-5, 8-10, 12-15, and 17 under 35 U.S.C. § 103(a) as being unpatentable over Sasa and Muramoto or De La Salle fails as well by virtue of their dependence from claims 1, 8, 11, and 16.

#### DECISION

We reverse the Examiner's decision to reject claims 1, 3-5, and 8-17 under 35 U.S.C. § 103(a) as unpatentable in view of Sasa and Muramoto or De La Salle.

#### REVERSED

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